



U. S. Department of Housing and Urban Development
Washington, D.C. 20410

OFFICE OF LEAD HAZARD CONTROL

POLICY GUIDANCE NUMBER: 94-06		DATE: August 30, 1994	
SUBJECT:		Environmental Review Procedures and Requirements	
STATUS:		Current	
APPLICABILITY:		All grant rounds.	
RELATED GUIDANCES:		Policy guidance 95-01, 95-06.	
COMMENTS:		Supplemental guidance is provided in 95-01.	

Dear Lead-Based Paint Hazard Control Grantee:

This letter is to inform grantees of the Lead-Based Paint Hazard Control Grant Program that regulations implementing the "Multifamily Housing Property Disposition Reform Act of 1994" allowing environmental review responsibilities to be assumed by recipient grantees under the above program will become effective on September 26, 1994 and to provide grantees guidance in the assumption of these responsibilities.

In accordance with the "Environmental Review Procedures for Recipients Assuming HUD Responsibilities", recipients of lead- based paint grants will assume environmental review responsibilities to the same extent as recipients under the HUD Home program at 24 Code of Federal Regulations (CFR) Part 58. The implementing regulations at 24 CFR Part 58 have been amended to reflect applicability of Part 58 to lead-based paint grants. These amendments were published in the Federal Register on August 26, 1994.

Prior to the Act, HUD retained the responsibility for assuring that environmental reviews were carried out. This new authority gives recipient grantees on properties being abated or made lead free the responsibility for assuring that environmental reviews are carried out, prior to committing to undertake "lead-abatement activities".

The following guidance is to assist grantees in the assumption of these responsibilities:

- An environmental review must be carried out in accordance with 24 CFR Part 58, at the time each property is proposed for lead-abatement activities under the grant. Undertaking "lead-abatement activities" means the grantee's commitment of any funds for abatement or hazard reduction or control as defined in the Notice of Funding Availability (NOFA).
- Where the project proposed by a recipient grantee includes rehabilitation or other activities that go beyond activities eligible for lead-abatement funding, the grantee is responsible for determining whether an environmental assessment under the National Environmental Policy Act is required, and must also determine the applicability of, and ensure compliance with, the environmental laws and authorities listed in 24 CFR 58.5 and 58.6. (Where the lead paint work will be part of a project assisted under the Community Development Block Grant (CDBG) or HOME Program, the recipient grantee is responsible for these actions in any event as a CDBG or HOME recipient.) However, where the project will be limited to activities eligible for lead-abatement funding, the grantee's environmental review for "lead-abatement activities" will be limited to satisfying its obligation to make an historic preservation finding under Section 106 of the National Historic Preservation Act and the implementing regulations (36 CFR Part 800). HUD has determined that projects consisting solely of lead-based paint abatement/hazard reduction or control fall within a categorical exclusion from review under the National Environmental Policy Act and are not subject to the remaining authorities listed in 24 CFR 58.5. However, the funding limitations under the Coastal-Barrier Resources Act End the flood insurance purchase requirements of the Flood Disaster Protection Act of 1993 contained in 24 CFR 58.6 are applicable. The grantee is responsible for compliance with these funding limitations and flood insurance purchase requirements, as discussed in the NOFA.

Grantees may obtain information about local environmental conditions from a "qualified data source". A "qualified data source" may include (a) any Federal, State or tribal agency with expertise or experience in environmental protection (e.g., land planning agency; State environmental protection agency; State Historic Preservation Officer; (b) professional environmental consultants; or (c) any other source qualified to provide reliable information or, the particular subject.

Under the Advisory Council on Historic Preservation Regulations (36 CFR Part 800), threshold reviews are required to determine whether a property is: (1) listed or eligible for listing on the National Register of Historic Places; (2) located within or directly adjacent to an historic district or property, or (3) a property whose area of potential effects includes an historic district or property historic properties and districts are subject by law to special

protection and historic preservation processing which grantees must perform to comply with the regulations.

Under the Coastal Barrier Resources Act, threshold reviews are required to determine if properties are located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes. Grantees are prohibited by Federal Law from using Federal financial assistance for properties, if the properties are located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes.

The Flood Disaster Protection Act of 1973 requires prospective home buyers of Special Flood Hazard Area (SFHA) properties to purchase and maintain flood insurance protection as a condition of approval of any HUD financial assistance for construction, reconstruction, repair or improvement of a building or mobile home, including lead-based paint abatement that involves permanent containment or encapsulation of lead-based paint or replacement of lead-painted surfaces or fixtures or interim control measures that involve repairs. When a grantee provides loan assistance to a homeowner, the insurance shall cover the term and loan amount. When the grantee provides grant assistance to a homeowner, the insurance shall cover the property cost (less estimated land cost) for the economic or useful life of the building. For example, a substantially improved building requires flood insurance coverage for the life of the building, while for minor rehabilitation such as repairing, weatherizing, or roofing of a building, a grantee may require flood insurance coverage from 5 to 15 years, as deemed feasible.

The grantees file for any SFHA property shall contain "proof of purchase" of flood insurance protection. The standard document for compliance is the Policy Declaration Form issued by the National Flood Insurance Program (NFIP) or issued by any property insurance company offering coverage under NFIP. The insured has its insurer automatically forward to the grantee the Policy Declaration Form which is used to verify compliance. The grantee's responsibility ceases when a mortgage loan is approved requiring flood insurance as a condition of loan approval by a lender (other than the grantee), whose responsibility is to assure flood insurance coverage for the loan.

Grantees are responsible for any required processing of documents and determination of compliance with Federal environmental laws and authorities of 24 CFR 58.5 and 58.6, and authorization of neighborhood or property specific activities.

HUD will approve the release of funds to undertake "lead- abatement activities" upon request and receipt of certification, (Form HUD 7015.15) executed by the certifying officer, that the grantee has fully carried out its environmental responsibilities. Certification under this procedure shall specify that the certifying officer is authorized and consents on behalf of the grantee to accept the

jurisdiction of Federal courts for purposes of enforcement of the responsibilities as such an official.

At least every three years, HUD intends to conduct in-depth monitoring of the environmental activities performed by recipient grantees. Limited monitoring of these activities will also be conducted during program monitoring site visits. If through limited or in-depth monitoring, HUD becomes aware of any environmental deficiencies, HUD may take appropriate action as stated in 24 CFR Part 58.77.

Your assigned Government Technical Representative (GTR) for your Lead Based Paint Hazard Control Reduction Grant is your primary HUD contact regarding your responsibilities for environmental reviews.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellis G. Goldman", with a long horizontal flourish extending to the left.

Ellis G. Goldman
Director, Program Management Division

Enclosures

[Federal Register: August 26, 1994]

Part IV

Department of Housing and Urban Development

Office of the Secretary

Office of Assistant Secretary

24 CFR Parts 58 and 92

HOME Investment Partnerships Program and Amendment to NOFA for FY 1994
for Indian Applicants Under the HOME Program; Interim Rule and Notice
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 58 and 92

[Docket No. R-94-1735; FR-3716-I-01]
RIN 2501-AB77

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the existing interim rule for the HOME Investment Partnerships Program by making it conform with program changes enacted in the Multifamily Housing Property Disposition Reform Act of 1994 and by making a number of additional clarifying changes.

DATES: Effective date: September 26, 1994, except amendments to part 92 effective October 26, 1994 through June 30, 1995.

Comments due date: Comments on this interim rule must be submitted on or before October 25, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013. This interim rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990). Implementing regulations for the HOME Program are at 24 CFR part 92.

The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) included a substantial number of amendments to the HOME program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626).

The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102-233, approved April 11, 1994) included an additional number of amendments to the HOME Program. The following discussion, arranged according to the sequence of the MHPDRA sections, summarizes the changes made to the HOME program regulation in this interim rule.

Section 201 of MHPDRA amends section 104(2) of NAHA to allow governors to designate State agencies or instrumentalities of the State (e.g., housing finance agencies or housing authorities) to administer HOME Program funds. Prior to this change, a subrecipient agreement was required between the State and its instrumentality to administer the HOME funds. This amendment provides greater flexibility to designate such an organization to run the program and the definition of State in Sec. 92.2 is amended accordingly.

Section 202 of MHPDRA amends section 214(1) of NAHA which required that at least 90 percent of the HOME funds invested in rental housing be for units occupied by families below 60 percent of median income. This amendment changes the requirement to say that at least 90 percent

of the units assisted, and in the case of tenant-based rental assistance, the families assisted be below 60 percent of median income. This amendment, as implemented through Sec. 92.216, will simplify the targeting requirement since it is easier to count units than funds invested.

Section 203 of MHPDRA amends section 215(b) of NAHA in two ways. The first change is the elimination of the ``first-time'' designation for homebuyers. The HCDA 1992 amendment broadened the eligibility of ``first-time'' homebuyers to include almost all low-income homebuyers. By eliminating the designation, participating jurisdictions will not have to document the statutory category under which income-eligible homebuyers qualify. The change will also conform the HOME Program to the CDBG Program, which does not restrict homebuyer assistance to first-time homebuyers.

The second change would permit participating jurisdictions to use funds recaptured from the sale of homebuyer units for any eligible HOME cost. The provision formerly limited the use of the recaptured funds to assistance for additional first-time homebuyers. This change will effect the use of current and future recaptured funds. Conforming changes have been made to Secs. 92.2, 92.61(b)(4), 92.150(b)(4), 92.205(a)(1), 92.206(b), 92.214(a)(7), 92.254(a), and 92.354 to implement the new homebuyer requirements.

Section 204 of MHPDRA amends section 220(a) of NAHA to effect a flat 25 percent match on all funds drawn down for HOME projects or tenant-based rental assistance. This provision eliminates the 30 percent match of funds drawn down for new construction. This new, lower match rate will be applied to all Fiscal Year 1993 funds currently expended or future year funds drawn down for eligible HOME activities, and Sec. 92.218 has been changed accordingly.

The new environmental provisions make three amendments to section 288 of NAHA which are implemented for the HOME Program by Sec. 92.352, for Subpart M--HOME Funds for Indian Tribes at Sec. 92.633, and also by revisions to HUD regulations in 24 CFR part 58, which govern the assumption of environmental responsibilities by recipients under the HOME program and other programs with similar statutory authority for recipient environmental reviews. The first amendment provides for assumption of HUD's environmental review responsibilities by all jurisdictions receiving assistance under the HOME Program, not just participating jurisdictions, as well as Indian tribes and insular areas.

The second amendment to Section 288 makes HOME environmental review procedures consistent with the procedures under the Community Development Block Grant and McKinney Act homeless assistance programs with regard to States' responsibilities. Where a State makes funds available to a unit of general local government, the State would perform the release of funds function otherwise performed by HUD, and local governments would assume the responsibility for performing environmental reviews. To the extent that the State would be using the HOME funds directly, HUD would approve the request for release of funds.

Third, a new paragraph, Sec. 58.77(d), is added to part 58, which adds the new statutory provisions for monitoring, training, and termination or suspension of assumption of review responsibilities.

The amendments to 24 CFR part 58 in this interim rule contain changes consistent with the above changes in part 92. In addition, Section 305 of MHPDRA amends Section 1011 of the HCDA 1992 to provide that for purposes of environmental review, decisionmaking and action, certain grants for lead-based paint hazard reduction and abatement shall be treated as assistance under the HOME Investment Partnership Act and shall be subject to HUD's regulations implementing section 288 of that Act. In other words, recipients of these lead-based paint

grants will assume environmental responsibilities to the same extent as recipients under the HOME program and will be subject to 24 CFR part 58. The grants covered by this provision are lead-based paint hazard reduction grants under section 1011, as well as grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (approved October 28, 1991, Pub. L. 102-139), (92 App. Act). Accordingly, Sec. 58.1(c) is amended to reflect the applicability of part 58 to these lead-based paint grants.

Section 208 of MHPDRA creates a new section 290 of NAHA which permits the Secretary to waive certain statutory provisions for PJs that are in federally-declared disaster areas under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and that will be using HOME funds to address damage. However, the Secretary may not waive requirements related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards and low-income housing affordability. With regard to low-income housing affordability, projects must meet the occupancy rent and periods of affordability provisions outlined in Secs. 92.252 and 92.254. It is the Department's intent to provide waivers on other HOME requirements based on the circumstances of a particular disaster, tailoring the waivers to the needs of the participating jurisdiction.

The Department is making a technical correction to Sec. 92.211(a)(2) to reflect the 1992 amendments to the Section 6(c)(4)(A) of the Housing Act of 1937. Selection policies and criteria for a tenant-based rental assistance program funded by HOME are considered reasonably related to the Federal preference rules if, at least, 50% of the families would meet the Federal preferences. The change reduces the proportion of families required to meet the Federal preferences from 70% to 50%.

The Department is amending Sec. 92.254(a) to include the requirement that homeownership under a lease-purchase agreement, in conjunction with a homebuyer program, must occur within 36 months. This addition serves to integrate policy guidance enunciated previously to the field into the rule. The Department believes that 36 months should be ample time for a homebuyer to resolve any outstanding credit problems, to complete homeowner education courses, or build up sufficient equity for homeownership (especially since HOME funds can be used for down-payment assistance). Lease-purchase arrangements in connection with homebuyer programs are not subject to the same occupancy and rental restrictions as are HOME rental projects and, therefore, the Department is concerned that any longer lease period would be contrary to the statutory requirements governing HOME rental projects. The Department would appreciate any comment regarding this regulatory amendment, whether the 36 month period is too long or not long enough or whether the time period should be determined by the PJ.

The HOME Program regulations published April 19, 1994 made a change to Sec. 92.252(a)(2) designed to prevent ``Low HOME Rents,'' as calculated, to be higher than ``High HOME Rents'' as a result of fair market rents in some regions. The change was made to correct this problem by indicating that if the low HOME rents were higher than the high HOME rents that the figure for the lower rent would be used for all HOME units. That change, however, has been interpreted as limiting the method for calculation of low HOME rents, which was not intended. Revisions have been made to Sec. 92.252(a)(2)(iii) to clarify this point.

This interim rule also makes clarifying changes to three cross-cutting program provisions in the HOME rule. First, this interim rule amends Sec. 92.257, ``Religious organizations,'' to remove a reference

relating to control of wholly secular entities established by ``primarily religious organizations'' to rehabilitate or construct housing which will therefore not be owned by such primarily religious organizations. The Department recognizes the important role served by religious groups in providing lower income housing. This change conforms the rule to the same principles and tests applied in the Community Development Block Grant regulations at Sec. 570.200(j) and in the section 202 program for elderly housing assistance. This clarification is intended to indicate the availability of no lesser role in the HOME program for entities established by a ``primarily religious organization,'' a term equivalent to what the United States Supreme Court describes as a ``pervasively sectarian institution,'' one in which ``religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission.'' Hunt v. McNair, 413 U.S. 734, 743 (1973).

Second, this interim rule revises Sec. 92.353(e) to set out the requirement that HOME participating jurisdictions must comply with the requirements of a Residential Antidisplacement and Relocation Assistance Plan (Plan). The change reflects a statutory amendment to the Comprehensive Housing Affordability Strategy made by Section 220(b) of the Housing and Community Development Act of 1992. A participating jurisdiction with a Community Development Block Grant (CDBG) must follow a Plan identical to its CDBG Plan. A participating jurisdiction that is not a CDBG grantee must follow a Plan that meets the requirements of the applicable CDBG regulation (24 CFR 570.606(c) for a local jurisdiction and Sec. 570.488(c) for States). A certification requirement related to this provision is also added to Sec. 92.10(c)(4). On July 1, 1994, HUD published a proposed rule at 24 CFR part 43 (59 FR 34300) describing proposed changes to Plan requirements. The deadline for public comments was August 1, 1994.

Finally, this interim rule also amends Sec. 92.354(a)(2), regarding Davis-Bacon Act applicability. The change is intended to make clear that construction contracts covering 12 or more units, disregarding the number of projects involved, are subject to Davis-Bacon requirements. Also, dividing a single project into multiple construction contracts for purposes of avoiding Davis-Bacon requirements is not permitted.

III. Findings and Certifications

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule simply constitutes the implementation of statutory language with the exercise of little or no discretion on the part of the Department and makes a number of clarifying changes to existing provisions. As such, prior notice and comment are unnecessary under 24 CFR Part 10. This rule is being published as an interim rule and not as a final rule because the HOME program regulation at 24 CFR part 92 has not yet been issued as a final rule.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This interim rule has been reviewed and approved in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule amended by this interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this amending rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this interim rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this interim rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. This interim rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if this interim rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under this interim rule is required by statute, and is not subject to agency discretion.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects

24 CFR Part 58

Environmental protection, Community development block grants, Environmental impact statements, Grant programs--housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs--housing and community development, Grant programs--Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends parts 58 and 92 of title 24 of the Code of Federal Regulations as follows:

PART 58--ENVIRONMENTAL REVIEW PROCEDURES FOR RECIPIENTS ASSUMING HUD RESPONSIBILITIES

1. The authority citation for part 58 is revised to read as follows:

Authority: 42 U.S.C. 1437o(i)(1) and (2), 3535(d), 4332, 4852, 5304(g), 11402, and 12838.

2. Section 58.1 is amended by:

- a. Revising the second sentence in the introductory text of paragraph (c);
- b. Removing the word ``and'' at the end of paragraph (c)(3);
- c. Removing the period at the end of paragraph (c)(4) and adding ``; and'' ; and
- d. Adding a new paragraph (c)(5), to read as follows:

Sec. 58.1 Purpose, scope and applicability.

* * * * *

(c) Applicability. * * * Programs and activities subject to this part include:

* * * * *

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under Section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o)).

3. In Sec. 58.2, paragraph (a)(4) is revised to read as follows:

Sec. 58.2 Terms, abbreviations and definitions.

(a) * * *

(4) Recipient means:

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands;

(iii) A unit of general local government; or

(iv) An Indian tribe.

* * * * *

4. In Sec. 58.4, the second sentence of paragraph (c)(1) is revised to read as follows:

Sec. 58.4 HUD legal authority.

* * * * *

(c) * * *

(1) * * * The State must submit the certification and RROF to HUD.

* * * * *

5. In Sec. 58.77, a new paragraph (d) is added to read as follows:

Sec. 58.77 Effect of approval of certification.

* * * * *

(d) Responsibility for monitoring and training. (1) At least once every three years, HUD intends to conduct in-depth monitoring of the environmental activities performed by recipients that have assumed responsibilities for environmental review, decisionmaking, and action under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by recipient staff at HUD sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the recipient's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions or other remedies provided in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a recipient with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under Sec. 58.17 with respect to projects and activities for which the Certifying Officer has submitted a RROF and certification under this part.

PART 92--HOME INVESTMENT PARTNERSHIPS PROGRAM

6. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839.

7. In Sec. 92.2, the definition of ``First-time homebuyer'' is removed, and the definition of ``State'' is revised to read as follows:

Sec. 92.2 Definitions.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this part.

* * * * *

8. Section 92.4 is redesignated Sec. 92.5, and a new Sec. 92.4 is added to read as follows:

Sec. 92.4 Suspension of requirements for disaster areas.

The Secretary may suspend any HOME statutory requirements (except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability) or regulatory requirements, for HOME funds designated by a recipient to address the damage in an area for which a disaster is declared under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

9. In Sec. 92.61, paragraph (b)(4) is revised to read as follows:

Sec. 92.61 Program description and housing strategy.

* * * * *

(b) * * *

(4) If the insular area intends to use HOME funds for homebuyers, the guidelines for resale or recapture as required in Sec. 92.254(a)(4);

* * * * *

10. In Sec. 92.150, paragraphs (b)(5) and (c)(4) are revised to read as follows:

Sec. 92.150 Submission of program description and certifications.

* * * * *

(b) * * *

(5) If the participating jurisdiction intends to use HOME funds for homebuyers, the guidelines for resale or recapture must be described as required in Sec. 92.254(a)(4);

* * * * *

(c) * * *

(4) A certification that the participating jurisdiction:

(i) Is following a Residential Antidisplacement and Relocation Assistance Plan as described in Sec. 92.353(e);

(ii) Will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24; and

(iii) Will comply with the requirements in Sec. 92.353.

* * * * *

11. In Sec. 92.205, paragraph (a)(1) is revised to read as follows:

Sec. 92.205 Eligible activities: General.

(a) * * *

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide tenant-based rental assistance, including security deposits; to provide payment of

reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in Secs. 92.206 through 92.209.

* * * * *

12. In Sec. 92.206, paragraph (b) is revised to read as follows:

Sec. 92.206 Eligible costs.

* * * * *

(b) Acquisition costs. Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

* * * * *

13. In Sec. 92.211, paragraph (a)(2) is revised to read as follows:

Sec. 92.211 Tenant-based rental assistance.

(a) * * *

(2) The participating jurisdiction selects families in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937 (42 U.S.C. 1437 et seq.). Selection policies and criteria meet the ``reasonably related'' requirement if at least 50% of the families assisted qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the Housing Act of 1937. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of (gross) family income for rent; or families that are involuntarily displaced. The participating jurisdiction may select low-income families currently residing in units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitation or acquired unit or in other qualified housing.

* * * * *

14. In Sec. 92.214, paragraph (a)(7) is revised to read as follows:

Sec. 92.214 Prohibited activities.

(a) * * *

(7) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction under Sec. 92.502 or Sec. 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see Sec. 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under Sec. 92.250.

* * * * *

15. In Sec. 92.216, paragraphs (a)(1) and (a)(2) are revised to read as follows:

Sec. 92.216 Income targeting: Tenant-based rental assistance and rental units--Initial eligibility determination and reexamination.

(a) * * *

(1) Not less than 90 percent of:

(i) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

(ii) The dwelling units assisted with such funds are occupied by families having such incomes; and

(2) The remainder of:

(i) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(ii) The dwelling units assisted with such funds are occupied by such households.

* * * * *

16. In Sec. 92.218, paragraph (a) is revised to read as follows:

Sec. 92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year.

* * * * *

17. In Sec. 92.252, paragraph (a)(2)(iii) is revised, to read as follows:

Sec. 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) * * *

(iii) If the rent determined under this paragraph (a)(2) is higher than the applicable rent under (a)(1) of this section, then the applicable maximum rent for units under this paragraph would be that calculated under (a)(1) of this section.

* * * * *

18. In Sec. 92.254, paragraphs (a)(3), (a)(4)(ii)(C) and (a)(4)(ii)(D) are revised, to read as follows:

Sec. 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(3) Is purchased within 36 months if a lease-purchase agreement in conjunction with a homebuyer program is used to acquire the housing;

(4) * * *

(ii) * * *

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at Sec. 92.254(a)(4)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on the rental units may be terminated at the discretion of the participating jurisdiction.

* * * * *

19. Section 92.257 is revised to read as follows:

Sec. 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity, which may be an entity established by the religious organization. The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

20. In Sec. 92.352, paragraph (b) is revised to read as follows:

Sec. 92.352 Environmental review.

* * * * *

(b) Responsibility for review. (1) The jurisdiction (e.g., the participating jurisdiction or state recipient) or insular area must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. In accordance with 24 CFR part 58, the jurisdiction or insular area must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.

(2) A state participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by state recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

21. In Sec. 92.353, paragraph (e) is revised to read as follows:

Sec. 92.353 Displacement, relocation, and acquisition.

* * * * *

(e) Residential antidisplacement and relocation assistance plan. Each participating jurisdiction shall comply with the Residential Antidisplacement and Relocation Assistance Plan requirements described at 24 CFR 570.606(c), or, in the case of a State-administered HOME Program, the requirements at 24 CFR 570.488(c). These policies require one-for-one replacement of low/moderate-income housing demolished or converted to another use and the provision of relocation assistance to lower income persons displaced by such conversion or by demolition.

* * * * *

22. In Sec. 92.354, paragraph (a)(2) is revised to read as follows:

Sec. 92.354 Labor.

(a) * * *

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs (as defined in Sec. 92.206), including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

* * * * *

23. Section 92.633 is revised to read as follows:

Sec. 92.633 Environmental review.

The Indian tribe must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. In accordance with 24 CFR part 58, the Indian tribe must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.

Dated: August 18, 1994.

Henry G. Cisneros,
Secretary.

[FR Doc. 94-20866 Filed 8-25-94; 8:45 am]

Public reporting burden for this collection of information is estimated to average 0.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2506-0087), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

Pursuant to Section 104(g) of Title I, Housing and Community Development Act of 1974; Section 17(i) of the U.S. Housing Act of 1937; Title IV of the Stewart B. McKinney Homeless Assistance Act; and Section 288 of the Cranston-Gonzales National Affordable Housing Act (NAHA)

1. Program Title(s) and OMB Catalog No(s):	2. HUD/State Identification Number:		
	3. Recipient Identification Number:		
4. Name & Address of Recipient:	5. For Information on this Request, Contact:		
	6. Date of Latest Assistance Action:		
7. Date of This Request:	Application Submission:	Preliminary Approval:	Grant Agreement:

Part 1. Request for Release of Funds

8. HUD or State Agency & Office Unit to Receive Request:

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of grant conditions governing the use of the assistance for the following:

9. Program Activity/Project Name	10. Location (Street Address, City, County, State)

11. Program Activity/Project Description

Part 2. Environmental Certification

With reference to the above Program Activity/Project, I, the undersigned officer of the recipient, certify that:

1. The recipient has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above.
2. The recipient has complied with the National Environmental Policy Act of 1969, as amended, and with the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5.
3. The recipient has taken or will take into account the environmental criteria, standards, permit requirements and other obligations applicable to the project or program activity under other Federal, State and local laws that the recipient has the direct responsibility to comply with.
4. For UDAG projects only, the recipient has provided the State Historic Preservation Officer and the Secretary of the Interior an opportunity to act with respect to properties which the recipient believes are affected by the project and are eligible for the National Register of Historic Places (Section 119(m), HCD Act of 1974, as amended).
5. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal ☐ did ☐ did not require the preparation and dissemination of an environmental impact statement.
6. The recipient has, prior to submitting this request for the release of funds and certification, published in the manner prescribed by 24 CFR 58.43 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies).
7. The dates upon which all statutory and regulatory time periods for review, comment or other action are indicated below and are in compliance with the procedures and requirements of 24 CFR 58.

Item		Commence	Expire	Item		Commence	Expire
Notice of Finding of No Significant Impact	Publication Date:			Notice of Intent to Prepare an EIS	Publication Date:		
	Comment Period:				Comment Period:		
Combined Notice: Finding of No Significant Impact and Intent to Request Release of Funds	Publication Date:			Draft EIS	Publication Date:		
	Comment Period:				Comment Period:		
Notice of Intent to Request Release of Funds	Publication Date:			Final EIS	Publication Date:		
	Comment Period:				Comment Period:		
Other (specify)				Other (specify)			
Request for Release of Funds	HUD or State Decision Period: (Minimum period for approval)			Request for Release of Funds	HUD or State Decision Period: (Minimum period for approval)		
Estimated by Recipient				Actual by HUD or State			

As the duly designated certifying official of the recipient, I also certify that:

1. I am authorized to and do consent to assume the status of responsible federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decisionmaking and actions that have been assumed by the recipient.
2. By so consenting, I have assumed the responsibilities for the conduct of environmental review, decisionmaking and actions as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and lead agency or cooperating agency responsibilities for preparation of such statements on behalf of federal agencies including HUD, when these agencies consent to such assumptions.
3. I am authorized to and do accept, on behalf of the recipient and personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the recipient.

Signature of Certifying Officer of the Recipient	Address
Title	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)